

REBEKAH PARKER SBN 143674
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Appearing for Susanna Kelham, in her Individual capacity,
and for the Unofficial Committee of Essential Creditors
and Post- Petitions Service Providers

**United States Bankruptcy Court
Northern District of California – Santa Rosa Division**

In re Kelham Vineyard & Winery, LLC

Debtors.

Case No. 23-10384-WL

Chapter 11

Adv. No 23-01009-WL

Susanna R. Kelham, in her Individual
Capacity as Managing Member of
Kelham Vineyard & Winery, LLC

Plaintiff,

v.

Ronald NicholSEN, II, in his Individual
Capacity as Petitioner in State Court
Action No. 21CV001403

Defendant.

**Declaration of Rebekah Parker in
Support of Motion for Temporary
Restraining Order and Preliminary
Injunction Staying Ronald NicholSEN
from Prosecuting, or Otherwise
Noticing Any Further Hearings in
State Court Case No. 21CV001403,
Pending the Liquidation of this Estate
and Further Order of the U.S.
Bankruptcy Court**

Date: November 7, 2023

Time: 9:30 A.M.

Room: Courtroom 220

United States Bankruptcy Court
1300 Clay Street
Oakland, CA 94612

**DECLARATION OF REBEKAH PARKER
IN SUPPORT OF MOTON FOR TRO & PI**

I, Rebekah Parker, declare,

1. I am an attorney-at-law, licensed to practice in the State of California.

2. I am also admitted to practice before the U.S. Bankruptcy Court for the Northern District of California.

3. The above captioned Chapter 11 Case was commenced as an involuntary proceeding.

4. An Order Relief was entered based on the petitioning creditor and debtor stated purpose of creating a vehicle or platform for the liquidation of KVV's asset, a goal fully embraced by largest creditors of this estate.

5. A Chapter 11 Trustee was recently appointed at the request of Ronald Nichol森 to oversee and assist KVV with the liquidation.

6. A Draft Disclosure Statement Describing Proposed Plan of Liquidation has been prepared in an effort to advance and assist KVV with a liquidation and will be filed by the Unofficial Committee of Essential Creditors and Post-Petition Providers (herein, the "Committee") as soon as permitted by the provisions of 11 U.S.C. §1126.

7. On Friday, September 8, 2023, I was retained by Susanna R. Kelham ("Proponent" or "Ms. Kelham") to file the above captioned adversary proceeding (herein, the "Complaint for Injunctive Relief") which, among other things, seeks an injunction staying Ronald Nichol森 from prosecuting case number 21CV001403 ("the Writ Action") pending the liquidation of the above captioned Estate.

1 8. I herein request that this Court take Judicial Notice of Complaint for Injunctive
2 Relief, along with the six exhibits attached thereto.

3 9. The Writ Action is a lawsuit filed by Ronald NicholSEN against KVV and Ms.
4 Kelham that seeks production of various corporate records pursuant to California
5 Corporations Code §§17704.10 and 17704. See, Exhibit 1 to the Complaint for
6 Injunctive Relief.

7 10. Through this motion, Ms. Kelham seeks a temporary restraining order or a
8 preliminary injunction, which ever may prove to be necessary, enjoining the further
9 prosecution of the Writ Action against either her or KVV, in any manner, including but
10 limited to Ronald NicholSEN requesting that any orders be issued by Napa County
11 Superior Court in the Writ Action at the OSC hearing scheduled for September 14,
12 2023, on the question of whether the automatic stay applies or extends to Ms. Kelham.

13 11. In an effort to minimize any inconvenience to this Court, I will be filing and
14 serving this motion on regular notice, and thereon requesting that Ronald NicholSEN
15 and his attorneys at Greenberg, Traurig, LLC (herein, the "Greenberg Law Firm")
16 stipulate to a full and complete stay of the Writ Action until this Court rules on this
17 motion.
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19 12. I will do my best not to burden this Court with either a request to have a TRO
20 issued without a hearing or a request to have a hearing on a PI on shortened notice.

21 13. The above captioned bankruptcy was commenced as an involuntary
22 proceeding filed on July 20, 2023, with an Order for Relief entered on August 16, 2023.

23 14. At the time of the filing of this involuntary, the Writ Action was pending in the
24 Napa County Superior Court.
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1 15. The stated purpose of the Writ Action is found at paragraph 23 of the Writ
2 Petition, which provides that Ronald NicholSEN “desires to obtain statutory documents
3 and to review, inspect, and copy the books of records of [KVV] for reasons related to
4 his interest as a member of Kelham Vineyards, including without limitation, to evaluate
5 the current value of [KVV] and its assets, [KVV]’s assets and liability, and the
6 corresponding value of his membership interest; to evaluate the propriety...”.

7 16. Unfortunately, the Writ Action has degenerated into an unchecked fishing
8 expedition being used by Ronald NicholSEN as a vehicle to extort or leverage an inflated
9 settlement from KVV in connection with the once proposed buyout of his minority
10 interest.

11 17. Ronald NicholSEN and the Greenberg Law Firm, along with the Napa County
12 Superior Court were put on notice of the commencement of the involuntary and the
13 resulting stay of 11 U.S.C. §362.

14 18. In recognition that the stay was in place, on July 31, 2023, before the Order for
15 Relief had been entered, Ronald NicholSEN through the Greenberg Law Firm filed a
16 Motion for Relief from Stay, setting a hearing for August 16, 2023. See, Exhibit 2 to
17 Complaint for Injunctive Relief.

18 19. I am informed and believe that, notwithstanding their recognition that a stay was
19 in place, sometime shortly after the filing of their Motion for Relief from Stay, Ronald
20 NicholSEN through the Greenberg Law Firm contacted the Napa Superior Court to
21 schedule a continued hearing in their further prosecution of the Writ Action; the hearing
22 was coincidentally noticed for August 17, 2023, the day after August 16, 2023, hearing
23 set on Ronald NicholSEN’s pending Motion for Relief from Stay. Ronald NicholSEN
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1 through the Greenberg Law Firm apparently convinced the Napa Superior Court to set
2 this continued hearing based on a false representation to the Superior Court, that the
3 stay would be lifted by August 16, 2023.

4 20. I am informed and believe that the misrepresentation that the stay would be
5 lifted by August 17, 2023, was made by Ronald Nicholsen through the Greenberg Law
6 Firm knowingly and willfully for the purposes of unlawfully continuing the prosecution of
7 the Writ Action in violation of the automatic stay.

8 21. I am informed and believe that the misrepresentation that the stay would be
9 lifted August 16, 2023, was made by Ronald Nicholsen for the purposes of harassing
10 KVV and his mother Ms. Kelham.

11 22. Ronald Nicholson's Motion for Relief from Stay, among other things, sought a
12 determination that the stay did not extend to Ms. Kelham in the Writ Action, putting the
13 matter "at-issue" in a 'contested proceeding' pending before the Bankruptcy Court.

14 23. Ronald Nicholson's Motion for Relief from Stay raised the issue of whether the
15 stay extended to or protected Ms. Kelham at page 9, Paragraph E of its motion,
16 captioned "The California state action is not stayed as to Susanna Kelham". See,
17 Exhibit 2 to Complaint for Injunctive Relief.

18 24. An Opposition filed by interested party and unsecured creditor Main Street
19 Cottage, LLC, provided responsive briefing on the issue of whether the stay extended
20 to or protected Ms. Kelham at page 13, paragraph III. F. See, Exhibit 3 to Complaint
21 for Injunctive Relief.

22 25. And finally, Ronald Nicholsen filed a Reply, which again addressed and briefed
23 the issue of whether the stay extended to Ms. Kelham; specifically, the issues is briefed
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1 at page 13, Section IV, captioned “The Automatic Stay Does Not – And Should Not –
2 Apply to Susanna Kelham.” See, Exhibit 4 to Complaint for Injunctive Relief.

3 26. After hearing oral argument on August 16, 2023, the Bankruptcy Court
4 continued its hearing on Ronald Nicholson’s Motion for Relief from Stay to September
5 5, 2023, without making any final findings or issuing any written orders.

6 27. I am informed and believe that the following day, at a hearing that itself was
7 unlawfully scheduled in violation of the automatic stay, rather than simply advising the
8 Napa County Superior Court that the Bankruptcy Court had continued their Motion for
9 Relief Stay, Ronald NicholSEN through the Greenberg Law Firm sought to continue or
10 further prosecute the Writ Action by falsely representing to the Napa County Superior
11 Court that the Bankruptcy Court had issued a ruling deferring the issue of whether the
12 stay applied to Ms. Kelham to the Napa County Superior Court.

13 28. I am informed and believe that, while the Bankruptcy Court may have postured
14 that the stay probably did not extend to Ms. Kelham, the Bankruptcy Court never made
15 any actual finding or ruling on this issue, therein expressly noting that its comments on
16 this issue were “... *just an aside*”.

17 29. I am informed and believe that, notwithstanding, Ronald NicholSEN through the
18 Greenberg Law Firm misrepresented to the Napa County Superior Court that the
19 Bankruptcy Court had made an actual finding or ruling that the issue of whether the
20 stay extended to Ms. Kelham was an issue to be decided by the Napa County Superior
21 Court, prompting the Napa County Superior Court, at Ronald Kelham’s request, to
22 issue an OSC set for hearing on September 14, 2023 and directing the parties to
23 provide briefing on the issue of whether the automatic stay applied or protected Ms.
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1 Kelham. I declare under penalty of perjury under the law of the United State of
2 American that the foregoing facts are true and correct to the best of my information and
3 belief

4 Executed on September 11, 2023, in the State of California, Count of Napa.

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8 Rebekah Parker
9 Declarant
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CERTIFICATE OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 4225-H Oceanside Boulevard #369, Oceanside CA, 92056-3472

A true and correct copy of the foregoing document described as **DECLARATION OF REBEKAH PARKER IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER OR/AND PRELIMINARY INJUNCTION STAYING RONALD NICHOLSEN FROM PROSECUTING, OR OTHERWISE NOTICING ANY FURTHER HEARINGS IN STATE COURT CASE NO. 21CV001403, PENDING THE LIQUIDATION OF THIS ESTATE AND FURTHER ORDER OF THE U.S. BANKRUPTCY COURT** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR; and **(b)** in the manner indicated below:

William Lafferty
U.S. Bankruptcy Court,
1300 Clay St. Room 220
Oakland, CA 94612
Served by Priority Mail

TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On September 11, 2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

| | |
|----------------------|-------------------------------|
| U.S. Trustee | USTPRegion17.SF.ECF@usdoj.gov |
| Paul Leahy | paul.leahy@usdoj.gov |
| Ryan Wood | ryan@westcoastbk.com |
| Rebekah Parker | attorneyrparker@gmail.com |
| Harold H. Davis, Jr. | hal.davis@gtlaw.com |
| Michael F. Thomson | thomsonm@gtlaw.com |
| Carson Heninger | carson.heninger@gtlaw.com |
| Michael J. Gomez | mgomez@frandzel.com |
| Wesley H. Avery | wavery@rpmlaw.com |

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL: On September 11, 2023, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Ron NicholSEN
223 Alchemy Way
Napa, CA 94558
Served by U.S. Mail

1 **III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL** (indicate method
2 for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on September 10,
3 2023, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who
4 consented in writing to such service method), by facsimile transmission and/or email as follows. Listing
5 the judge here constitutes a declaration that personal delivery on the judge will be completed no later
6 than 24 hours after the document is filed.

7 Susanna R. Kelham
8 Manager Member
9 Kelham Vineyard & Winery, LLC.
10 360 Zinfandel Lane
11 St. Helena, CA 94574
12 Served by Email:
13 info@kelhamvineyards.com.

Alexis White, Attorney for
Susanna R. Kelham
Day, Pace, York & York
587 Jefferson Street
Napa, CA 94559
Served by Email
awhite@yorkyorklaw.com

14 Service information continued on attached page: None

15 I declare under penalty of perjury under the laws of the United States of America that the foregoing is
16 true and correct.

17 September 11, 2023

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19 Rebekah Parker
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